

APPEAL No. 14-55797

UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

SKIDMORE, AS TRUSTEE FOR THE RANDY
CRAIG WOLFE TRUST

Plaintiff-Appellant, v.

LED ZEPPELIN *ET AL.*
Defendants-Appellees.

MUSIC COPYRIGHT INFRINGEMENT,
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA
THE HONORABLE R. GARY KLAUSNER
THE CASE WAS DOCKETED IN THE CENTRAL DISTRICT AS
CASE NO. 15-CV-03462

**MOTION BY THE PLAINTIFF-APPELLANT SKIDMORE FOR LEAVE TO
FILE AN EXTENDED BRIEF IN EXCESS OF 14,000 WORD LIMIT**

PURSUANT TO F.R.A.P., NINTH CIRCUIT RULE 32-2

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Attorneys for the Plaintiff-Appellant Skidmore

Plaintiff-Appellant, Michael Skidmore, as Trustee for the Randy Craig Wolfe Trust (“Skidmore” or “Plaintiff-Appellant”) respectfully seeks leave of Court to file an extended brief in excess of the 14,000 word limit imposed by Federal Rule of Appellate Procedure, Ninth Circuit Rule 32-2. Ninth Circuit Rule 32-2 permits a party to request leave to file an extended brief if that party shows diligence and substantial need.

By and through counsel and counsel’s declaration, Plaintiff-Appellant represents that diligence was made in attempting to comply with the 14,000 word limit; however, there is a substantial need to allow an extended brief. See Declaration of Francis Malofiy.

Pursuant to the Circuit Advisory Committee Note to Rule 27-1, counsel for the Plaintiff-Appellant informed Appellees’ counsel of its intent to file this Motion on March 15, 2017. Counsel for Appellees’ responded that Appellees take no position on the motion to extend the length of Plaintiff-Appellant’s brief and instead will defer to the Court.

Respectfully submitted,

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*Attorneys for the Plaintiff-Appellant
Skidmore*

March 15, 2017

CERTIFICATE OF FILING AND SERVICE

Counsel was served via CM/ECF which constitutes service, pursuant to Fed. R. App. P. 25(c)(2) and Ninth Circuit Rule 25-5(g), to all registered CM/ECF users.

Respectfully submitted,

/s/ Francis Malofiy

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March 15, 2017

DECLARATION OF FRANCIS MALOFIY

I, Francis Malofiy, attorney for Plaintiff-Appellant, Michael Skidmore, as Trustee for the Randy Craig Wolfe Trust, declare and state that I have personal knowledge of the facts recited below:

1. Counsel diligently attempted to comply with the 14,000 word limit imposed by Federal Rule of Appellate Procedure, Ninth Circuit Rule 32-2.
2. Given the number of issues on appeal and the complexity of effectively presenting Plaintiff-Appellant's arguments to this Court and establishing enough facts and supporting evidence of the Record to support the arguments, Counsel was unable to comply with the 14,000 word limit.
3. The issues on appeal are as follows:
 - a. Whether the trial court erroneously precluded the composition of Taurus as embodied in the sound recordings of Taurus, artificially limiting the substantial similarity comparison to an outline of Taurus's composition submitted to the Copyright Office.
 - b. Whether the trial court committed reversible error by failing to admit the sound recording of Taurus to prove access.
 - c. Whether the trial court committed reversible error by refusing to give an instruction on the inverse ratio rule without any explanation or justification for the exclusion.

- d. Whether the trial court committed reversible error by failing to instruct the jury that combinations and arrangements of unprotectable musical elements are protectable.
 - e. Whether the trial court committed reversible error by erroneously instructing the jury on originality and the scope of protection for certain musical elements.
 - f. Whether the trial court erroneously failed to play correct version of the Taurus deposit copy for the jury during deliberations.
 - g. Whether the trial court committed reversible error and violated Plaintiff's due process rights by inflexibly limiting plaintiff's time to present his case to ten hours, inclusive of direct exam, cross exam, and rebuttal.
 - h. Whether the trial court committed reversible error by erroneously refusing to preclude the testimony of defense musicologist Dr. Lawrence Ferrara who concealed his prior employment by Plaintiff's publisher to analyze Taurus and Stairway to Heaven.
4. Counsel additionally spent a considerable amount of time revising, editing, and even eliminating block quoting in deference to simple citation of the record in the hopes of cutting down and focusing the arguments and supportive facts and evidence from the Record. Although over 5000 words were cut from the Brief, counsel was still not able to comply with the 14,000 word limit.
5. After diligence was taken to comply with the 14,000 word limit and after all efforts were made to comply including, edits, revisions, deletions, summations, and citations, Counsel could not reduce the word count to less than 17,634, which is the word count of Plaintiff's Opening Brief.

6. Plaintiff-Appellant respectfully requests that this Honorable Court grant leave to permit the filing of Plaintiff-Appellant's Opening Brief in excess of the 14,000 word limit.
7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th, Day of March 2017, in Media, Pennsylvania.

Respectfully submitted,

/s/ Francis Malofiy

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